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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Policies and Rules Concerning  
Children's Television Programming  
and Revision of Programming Policies  
for Television Broadcast Stations

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MM Docket No. 93-48

REPLY COMMENTS OF  
THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

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## SUMMARY

Last Fall President Clinton and NTIA each submitted a letter in this proceeding urging the Commission to strengthen implementation of its educational children's television programming regulations by adopting a minimum programming requirement of "at least three hours per week, and preferably more." This approach was supported because it would provide broadcasters with straightforward guidance regarding license renewal expectations, ease implementation and enforcement, and create a level playing field for all broadcasters. More recently, in President Clinton's February 29 meeting with television industry leaders and in Vice-President Gore's April 16 remarks at the National Association of Broadcasters Annual Convention, the Administration has stressed its commitment to fostering an increase in the amount and quality of children's programming each week as well as improved means for informing the public of such programming availability.

These reply comments again emphasize the need for the Commission to ensure that those using the public airwaves provide sufficient hours of quality children's programming each week, as Congress intended. The Commission has the opportunity to create genuine, meaningful improvements in television programming for children and bring to realization the full potential of the broadcast medium. We thus urge the Commission to strengthen its regulations and clarify broadcasters' responsibilities under the CTA by establishing a clear and effective definition of such

programming and requiring improvements in the amount of information available to the public about such programming. Moreover, we support strict enforcement of the revised regulations, which eventually should be applied in the digital broadcasting era.

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REPLY COMMENTS OF  
THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

The National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce and the Executive Branch agency principally responsible for the development and presentation of U.S. telecommunications and information policy on behalf of the Administration, respectfully provides further comments in response to the Commission's Notice of Proposed Rulemaking ("Notice")<sup>1/</sup> in the above-captioned proceeding.

I. INTRODUCTION

Remarkable progress has recently been made toward improving what America's children watch on television. In a historic February 29 meeting at the White House, President Clinton and television industry leaders discussed industry efforts to help

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<sup>1/</sup> Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations, Notice of Proposed Rulemaking, 10 FCC Rcd 6308 (1995) ("Notice"). Hereinafter, all Comments and Reply Comments cited refer to filings received in MM Docket No. 93-48 on October 16, 1995 and November 19, 1995 respectively, unless otherwise indicated.

parents control what their children watch on television and how the industry can improve the quality of children's programming. President Clinton called this meeting because he has deemed improving television programming quality -- particularly when children are in the audience -- a high priority. Industry leaders agreed to develop within the next year a rating system for their programming that will help parents protect their children from violence and other objectionable content.<sup>2/</sup>

Reflecting on this industry pledge, Vice-President Gore, in his April 16 remarks at the National Association of Broadcasters (NAB) Annual Convention, noted that "there is still more to do to ensure that the future of television supports and nurtures our children."<sup>3/</sup> He reiterated this Administration's commitment to fostering an increase in the amount and quality of children's programming each week as well as improved means for informing the public of such programming availability, including a new "Family Right-to Know" initiative to provide such information via the Internet. And the Vice-President specifically reiterated the Administration's commitment to the requirement that broadcasters

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<sup>2/</sup> Radio Address by the President to the Nation (Mar. 2, 1996). See also Remarks by the President at Opening of Meeting with Media Executives (Feb. 29, 1996) ("Remarks by the President"), and Statement by the President (Feb. 29, 1996).

<sup>3/</sup> Vice President Al Gore, Prepared Remarks at the National Association of Broadcasters Annual Convention, Las Vegas, Nev. (April 16, 1996).

air at least three hours of children's educational programming each week.

Regrettably, the state of television programming for children today is far from satisfactory. Pervasive violence saturates the public airwaves, and quality educational programming -- commonplace in other developed nations -- is seriously lacking in commercial broadcast lineups. To remedy this situation, parents must not only be able to tune out what they do not want their children to watch; they must be able to tune in good programs that their children will watch. The nation relies on broadcasters to use the power granted to them as public trustees to provide such programming.

Indeed, those who use the public airwaves hold in their hands tremendous power to do good -- the power not only to entertain, but also to educate and enlighten. The President recently stated, "the dissemination of true educational programming across the public airwaves is a priceless gift to our children."<sup>4</sup>/ Studies confirm the positive influence television can have on children's learning -- not only by improving test scores, but also by capturing children's attention and inspiring

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<sup>4</sup>/ Letter from Bill Clinton, President of the United States, to Reed Hundt, Chairman of the Federal Communications Commission (Sept. 18, 1995).

them to learn about the world around them.<sup>5/</sup> While noncommercial broadcasters help fulfill the remarkable potential of the broadcast medium to educate our nation's children, commercial broadcasters should play a more substantial role in achieving this end.

Congress sought to address this deficiency by enacting the requirement in the Children's Television Act ("CTA") of 1990 that the Commission consider the extent to which licensees serve children's educational needs when renewing broadcast licenses.<sup>6/</sup> The CTA recognizes the power and value of television's influence on our nation's children by setting forth a reasonable exchange -- it requires commercial broadcasters to honor their public trust by offering programming that enhances children's learning.

While some television broadcasters are starting to take voluntary steps towards fulfilling their obligation to serve children under the CTA, the Commission's current proceeding seeking to strengthen its regulations implementing the children's

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<sup>5/</sup> 47 U.S.C. §303a note (Supp. V. 1993). See also Comments of Aletha C. Huston and John C. Wright at 2.

<sup>6/</sup> The Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303b (Supp. V. 1993), includes a requirement that the Commission, in its review of television broadcast licenses, consider the extent to which licensees have served the educational and informational needs of children through overall programming, including programming specifically designed to serve such needs.



programming element of the CTA remains absolutely necessary.<sup>7/</sup> As the Commission has stated, the current approach to implementing the CTA is not providing any significant change in the amount of educational programming available to children.<sup>8/</sup> Moreover, there appears in many quarters to be a consensus, as the overwhelming of number of commenters suggest, that broadcasters' response to the CTA has been disappointing. Today there is relatively little new educational programming for children on commercial broadcast stations.<sup>9/</sup> While we commend those broadcasters that have made serious efforts to meet the

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7/ See supra n. 1.

8/ In large part, the current regulations simply restate the broad premise of the CTA, i.e., they state that each broadcaster has an obligation to serve the educational needs of children and define educational programming as any programming that furthers the "positive development" of children in any respect. 47 C.F.R. §73.671 (1995). In 1993, the Commission determined that nearly two years after these regulations were issued, broadcasters' level of performance was not consistent with the objectives underlying the CTA. Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations, Notice of Inquiry, MM Docket No. 93-48, 8 FCC Rcd 1841, 1842, ¶¶ 6-7 (1993). The Commission indicated again last year that its past efforts had been insufficient to bring about the measurable increase in educational programming sought by Congress. Notice at 6311, ¶ 7, 6319, ¶ 19, 6327, para. 35. See also Senate Committee on Commerce, Science, and Transportation, Children's Television Act of 1989, S. Rep. No. 227, 101st Cong., 1st Sess. 1-9 (1989).

9/ Data collected by Dr. Dale Kunkel supports this conclusion. Comments of Dr. Dale Kunkel ("Kunkel") at 1-6 and Attachment, "Broadcasters' Response to the Children's Television Act"; Reply Comments of Kunkel at 1-18; and the comments of hundreds of individual citizens who wrote to the Commission urging that additional children's educational programming be required.

goals of the CTA,<sup>10/</sup> many broadcasters still do not provide sufficient educational programming for children. Thus, regulatory improvements are necessary to clarify broadcasters' responsibilities and ensure that all broadcasters meet children's needs.

To foster this end, last fall President Clinton urged the Commission to strengthen implementation of its educational children's television programming regulations.<sup>11/</sup> NTIA also urged such improvements.<sup>12/</sup> The letters sent to the Commission by the President and NTIA (copies attached) urged the Commission to adopt a minimum programming requirement of "at least three hours per week, and preferably more," an approach that would provide broadcasters straightforward guidance regarding license renewal expectations, ease implementation and enforcement, and create a level playing field for broadcasters.

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<sup>10/</sup> For example, the Fox Network provides several hours of educational children's programming each week. See Reply Comments of the Children's Television Workshop ("CTW") at 5. In addition, as noted supra at 2, others are moving in this direction. See also, e.g., Rich Frank, "Using the Power of Television," INTV Conference Keynote Speech, Las Vegas, Nev. (Jan. 22, 1996).

<sup>11/</sup> Supra n. 4.

<sup>12/</sup> Letter from Larry Irving, Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration, to Reed Hundt, Chairman of the Federal Communications Commission (Sept. 19, 1995).

These reply comments reiterate the importance of improving children's television and urge the Commission again to take this opportunity to ensure that those using the public airwaves serve children's needs, as Congress intended. In particular, NTIA provides further support for a more specific definition of "educational," as described further below. In addition, we support the Commission's proposals to increase the amount of information available to the public about educational children's programming. Finally, we believe that the Commission's strengthened educational programming requirements should be vigorously enforced, now as well as in the coming digital broadcasting era.

## II. THE DEFINITION OF EDUCATIONAL PROGRAMMING REQUIRES MODIFICATION.

We agree with the Commission that it would be beneficial to clarify the definition of "educational and informational" programming. Without a clear definition, the CTA's educational objective cannot be realized. Lack of a clear definition in the past has led to confusion, as some broadcasters have suggested that programs of questionable educational value qualify as meeting the public interest obligation.<sup>13/</sup> We agree that the Commission's proposed six-part definition addresses the key elements to be included in a definition. We believe that the

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<sup>13/</sup> See Comments of Kunkel at 1-6.

final definition, however, should also reflect the points discussed below.<sup>14/</sup>

First, simply requiring education as a "significant purpose" is not a sufficient standard to meet the educational needs of children. We urge the Commission instead to require that such programs have education as a "principal purpose." We acknowledge -- as do many other commenters -- that children's shows must be entertaining to attract an audience,<sup>15/</sup> but the educational element should not be overwhelmed by the entertainment component. Entertainment as the overriding purpose of a program will not ensure that the nation's children receive the educational programming that they deserve. Moreover, the enormous popularity of programs such as "Sesame Street" and "Barney" demonstrate that producers can develop programs that are both educational and entertaining.<sup>16/</sup> Indeed, the President has noted that

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<sup>14/</sup> In addition to these points, we question whether the Commission should permit 15-minute programs to be included in the definition of educational programming. Such programming, even if regularly scheduled, would be out of step with traditional schedules and interfere with other programs. As very little of the U.S. television schedule is provided in 15-minute segments, viewers watching such segments would either have to leave other programs early or start watching them late. Thus, if allowed, only a limited part of a station's programming obligation should be met with 15-minute programs. Moreover, the Commission should monitor the use of such programs over the next two to three years to evaluate the effectiveness of this approach and determine whether it should continue to be allowed.

<sup>15/</sup> Notice at 6324, ¶ 30. See, e.g., Comments of CTW at 14-16.

<sup>16/</sup> See Comments of CTW at 20-22, Reply Comments of CTW at 3.

"America's media and entertainment industry is the world's most vital creative force."<sup>17/</sup> Certainly this creative force is capable of developing educational programming that children will want to watch.

Second, we urge slight refinement of the element requiring that the educational objective of a program and the target child audience be specified in writing. As part of this element, the Commission should specify a standard reporting format.<sup>18/</sup> A standardized format would help broadcasters inform the Commission and the public of the educational objectives the programming seeks to achieve and the age groups the programming seeks to target.<sup>19/</sup> These are critical elements of an effective definition and would simplify the Commission's enforcement.

Finally, the Commission's definition should encompass only programming aired between 7 a.m. and 10 p.m., not 6 a.m. to 11 p.m., as the Commission proposes.<sup>20/</sup> As Vice-President Gore noted in remarks to the NAB, broadcasters should air children's

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<sup>17/</sup> Statement by the President at 2.

<sup>18/</sup> At least one commenter proposed such an approach. Comments of the Center for Media Education ("CME") at 42-44.

<sup>19/</sup> One commenter found that, under current regulations, which provide scant guidance as to the definition of educational programming, broadcasters' educational program descriptions varied widely. Some stations did not even provide the basic information required by the Commission. Comments of Kunkel at 5-6.

<sup>20/</sup> Notice at 6329, ¶ 40.

television at times they will actually be watching, based on viewing habits of different age groups. In fact, several commenters noted that few children watch television in the very early morning and late evening hours, which limits the usefulness of airing educational programming at those times.<sup>21/</sup>

Accordingly, when reviewing license renewal applications, the Commission should consider whether stations have scheduled programming at times suitable for the age groups targeted by their educational programming. Educational programming suitable for school-age children, for example, may reach only a limited audience if aired during school hours. While the Commission should not become a program scheduler, it should consider such practical issues in crafting an appropriate definition of "educational" and reviewing license renewal applications.

### III. PUBLIC INFORMATION IMPROVEMENTS ARE NEEDED.

NTIA also supports the Commission's proposed public information improvements,<sup>22/</sup> which will help parents locate suitable programming and assess the performance of local

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<sup>21/</sup> See, e.g., Reply Comments of CTW at 19-20, Reply Comments of CME at 32.

<sup>22/</sup> Notice at 6322-23, ¶¶ 24-26. NTIA strongly supports the Commission's proposed improvements with one exception: on-screen identification of educational programming, because this may be a disincentive for some children to watch it. Several commenters have suggested that children will shy away from programming deemed "educational". See, e.g., Comments of Warner Bros. Television Network, Warner Bros., and Time Warner, Inc. at 13; Reply Comments of CTW at 21-22.

stations. Vice-President Gore proposed before the NAB not only that educational programs be identified in television listings, but that broadcasters undertake a new "Family Right-to-Know" initiative. Under this initiative, broadcasters would continue to include information on educational programs in public files, but would also provide such information in electronic form to the Commission to enable its posting on the Commission's home page on the World Wide Web. As Vice-President Gore stated: "Any parent could search their own or their local library's computer, and with a few clicks of the mouse take a look at how [broadcasters have] been meeting the public interest."

One of the most important improvements the Commission proposes is requiring broadcasters to provide educational programming information to programming guide publishers so that such programs can be readily identified in television schedules. Extending this concept to the World Wide Web would enormously empower American parents. Not only do parents want information to help them avoid objectionable programming, but they also need information to help them find programs that are good for their children. The ready availability of such information will keep the remote control firmly in the hands of America's parents. It will also facilitate enforcement of the CTA, as parents and communities will have the information necessary to hold licensees accountable for their programming. The Commission's proposed

public information requirements are thus a critical step in the right direction.

#### IV. ENFORCEMENT OF THE CTA'S EDUCATIONAL PROGRAMMING REQUIREMENTS SHOULD BE STRENGTHENED.

Strengthened children's programming regulations will provide the Commission with the tools to enforce the CTA. The lack of clear-cut guidance and easy public access to programming information in the past has hampered the Commission's ability to implement effectively the intent underlying the CTA.<sup>23/</sup> In addition to enacting firmer requirements, strong, swift penalties for lack of compliance must also be adopted. Fines must be high enough to deter non-compliant conduct,<sup>24/</sup> particularly as it seems to be less lucrative for broadcasters to air children's educational programming. If a station's lack of compliance is repeated and particularly egregious, its license must eventually be revoked. Strict enforcement is particularly necessary due to the relaxation of overall license renewal requirements under the Telecommunications Act of 1996.<sup>25/</sup> Under this new law, the need for rigorous enforcement of broadcasters' public interest

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<sup>23/</sup> Since passage of the CTA, the Commission has renewed licenses even when stations' responses to the CTA appeared minimal. See Reply Comments of Henry Geller at 7.

<sup>24/</sup> The Commission is authorized to impose fines up to \$25,000 for each violation or day of a continuing violation, and up to \$250,000 for any single act or failure to act. 47 U.S.C. §503(b)(2)(A); 47 C.F.R. §1.80(b)(1) (1994).

<sup>25/</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, §204, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §309(k)).



obligations is more important than ever. For meaningful improvements in children's television to occur, it is important - and only fair -- for all broadcasters in every market to comply with the regulations.

V. THE CHILDREN'S EDUCATIONAL PROGRAMMING REQUIREMENTS SHOULD BE CONTINUED IN THE DIGITAL BROADCAST ERA.

NTIA also believes that strengthened children's television programming regulations are sufficiently important that the Commission must retain them as broadcasters migrate to digital technology.<sup>26/</sup> As the Commission considers broadcasters' entry into the digital age, commitment to the public interest, particularly the interests of children, should be restated and strengthened. New technology may offer additional opportunities and possibilities for service to our nation's children. While detailed requirements for the digital era are not yet established, educational children's programming must continue to be widely available from all broadcasters when they migrate to a digital broadcasting standard.

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<sup>26/</sup> This approach is consistent with the language in Section 201 of the Telecommunications Act of 1996, and the Joint Explanatory Statement of the Committee of Conference at p. 44, indicating that public interest obligations continue to apply to new licenses and services for television broadcasting. Others also support this approach. See Comments of the Caucus for Producers, Writers, and Directors at 1-2. In addition, Apple Computer, Inc. discussed how advanced television services can provide educational benefits for children. Comments of Apple Computer, Inc. at 1-2.

VI. CONCLUSION.

The Commission has the opportunity to create genuine and meaningful improvements in television programming for children and to finally begin to realize the full potential of the broadcast medium. We urge the Commission to strengthen its regulations and clarify broadcasters' responsibilities under the CTA. We further urge the Commission to establish a clear and effective definition of such programming, and to require improvements in the amount of information available to the public about such programming. Moreover, we support strict enforcement of the revised regulations, which eventually should be applied in the digital broadcasting era.

Respectfully submitted,

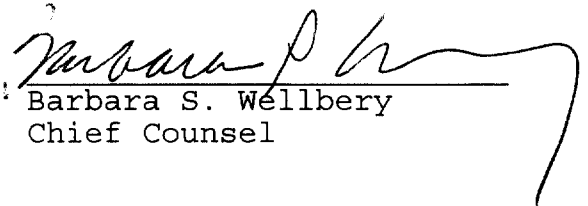
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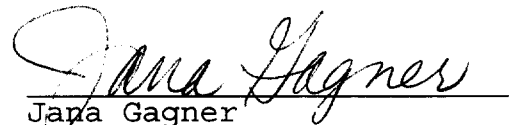
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April 18, 1996

THE WHITE HOUSE

WASHINGTON

September 18, 1995

The Honorable Reed Hundt  
Chair  
Federal Communications Commission  
8th Floor  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Chairman Hundt:

The Children's Television Act of 1990 recognizes the power and value of television's influence on our nation's children. The Act sets forth a reasonable exchange -- it requires commercial broadcasters to honor their public trust by offering programming that enhances children's learning. The dissemination of true educational programming across the public airwaves is a priceless gift to our children.

The American public had every reason to believe that when the Children's Television Act was signed into law, programming specifically designed to benefit children would become an important part of the choices on every broadcast channel. The American public has been disappointed, and American children have lost countless opportunities to learn and to be challenged intellectually.

I urge you again to review the purpose of the Children's Television Act and the broadcast programming our children are offered today. To paraphrase former FCC Commissioner Newton Minow, if we can't figure out how the public interest standard relates to children, the youngest of whom can't read or write, and all of whom are dependent in every way on adults, then we will never figure out the meaning of the public interest standard.

I believe the public interest should require broadcasters to air at least three hours per week, and preferably more, of quality children's programming at reasonable times of the day. The FCC and the broadcast industry have an unequalled opportunity to redefine how television can serve the public interest, especially with respect to our children. I urge you to do so.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Clinton". The signature is fluid and cursive, with a long horizontal stroke at the end.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Communications**  
**and Information**  
Washington, D.C. 20230

September 19, 1995

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing to express my strong support for clear, specific rules implementing the Children's Television Act of 1990. Five years after passage of this landmark legislation, parents still cannot find educational programming for their children on many commercial broadcast stations. Clear guidelines and tough enforcement are needed to give children and parents the educational programming choices this law was intended to provide.

One of the strongest influences on a child growing up in America is the electronic media. The average child in America watches about 25 to 30 hours of television every week. Many of these hours are filled with violence and adult sexual material.

Broadcasters, unlike other businesses including cable television, use the public airwaves free of charge. In return, they are supposed to serve the public interest. But over the years, the public has received less and less in this bargain. Programming covering local communities and local issues, as well as programming that serves children in the community, has been steadily reduced in favor of more lucrative commercial programming. Children's educational programming has been reduced to less than half an hour a week on many commercial stations.

Recent studies, including one conducted by researchers at the University of Kansas, have confirmed the positive influence television can have on children's learning. The study found that viewing as little as a half hour per day of educational programming improved children's test scores on a variety of subjects. Perhaps more important, television has the power to capture children's attention and inspire them to learn about the world around them.

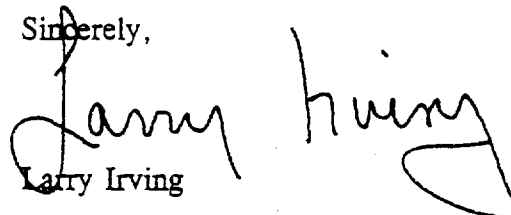
Yet most commercial television stations choose not to use their power to inspire or to educate our nation's children. Because of the highly competitive nature of the commercial advertising market, it is very difficult for a broadcaster to air an educational children's program that does not attract the top advertising dollar if his competitors decide not to air any educational children's programs. The result is very little service for children in that community.

The 1990 law was passed to address exactly this problem. It was designed to give broadcasters broad discretion to decide how to serve children in their communities. At the same time, it created a level playing field by requiring all broadcasters to provide some minimal level of educational service to children. However, the flexibility of this law has been stretched too far, allowing many broadcasters to virtually ignore its requirements. Some broadcasters actually redefined programs such as the Flintstones and Yo Yogi as educational in order to meet their obligations to children. While these programs are certainly unobjectionable as entertainment, they are not specifically designed to serve the educational needs of children.

Clearly, the current regulations are not working. For this reason, I urge you to establish clear guidelines requiring broadcasters to air at least three hours, and preferably more, of children's educational programming each week during hours when children are in the audience. I also urge you to consult with industry, educators and parents, to develop more specific guidelines for broadcasters on the types of programming that serve the educational or informational needs of children.

It is time for strong enforcement of children's educational programming laws by the FCC in order to ensure that all citizens, including the youngest, are served by broadcasters who use the public airwaves. I look forward to action by the FCC on your pending rulemaking to more fully enforce this important public law.

Sincerely,

  
Larry Irving

cc: The Honorable James H. Quello  
The Honorable Andrew C. Barrett  
The Honorable Rachelle B. Chong  
The Honorable Susan Ness

CERTIFICATE OF SERVICE

I, Cathleen K. Wasilewski, do hereby certify that I have this 18th day of April, 1996, delivered copies of the foregoing letter regarding Policies and Rules Concerning Children's Television Programming and Revisions of Programming Policies for Television Broadcast Stations, via hand delivery (\*) or by United States mail, postage prepaid, to the following:

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